

June 27, 2005

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JUN 27 2005

Marlene H. Dortch, Esq., Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Attn: Chief, Allocations Branch, Audio Division, Media Bureau

Re: *Amendment of Section 73.202(b), Table of Allotments, FM
Broadcast Stations. (High Point and Liberty, North Carolina)*
MB Docket No. 05-115, RM-11202

Dear Ms. Dortch:

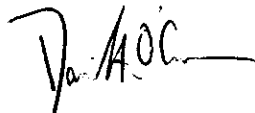
Transmitted herewith, on behalf of Capitol Broadcasting Company, Inc., are an original and four (4) copies of a Surreply and a Motion for leave to file the Surreply in the above-captioned proceeding.

Extra copies of the filings are enclosed. Please date-stamp the extra copies and return them to the courier.

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Capitol Broadcasting Company, Inc.

Enclosure
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JUN 27 2005

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) MB Docket No. 05-115
Amendment of Section 73.202(b),) RM-11202
Table of Allotments,)
FM Broadcast Stations.)
(High Point and Liberty, North Carolina))

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JUN 27 2005

To: Office of the Secretary
For: Allocations Branch, Audio Division, Media Bureau

Federal Communications Commission
Office of Secretary

**SURREPLY OF
CAPITOL BROADCASTING COMPANY, INC.**

Capitol Broadcasting Company, Inc. ("Capitol"), licensee of WFXQ(FM), Chase City, Virginia, Facility Identification No. 51760 ("WFXQ"), by its attorneys, hereby submits this Surreply in response to the Reply of Capstar TX Limited Partnership ("Capstar") filed on May 24, 2005.¹ Capstar has requested the reallocation, downgrade, and modification of its license for Station WVBZ(FM) ("WVBZ") from Channel 262C at High Point, North Carolina to Channel 262C0 at Liberty, North Carolina (the "Capstar Proposal").²

In its comments responding to the *Notice of Proposed Rulemaking* in this proceeding, Capitol requested that the Commission grant Capstar's proposal, subject to a modification to

¹ A separate Motion for leave to file this Surreply is being submitted concurrently with this pleading.

² This proceeding is not subject to the freeze on the filing of new petitions for rulemaking to amend the FM Table of Allotments. The freeze was imposed on June 9, 2005. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rule Making, MB Docket No. 05-210, ¶ 47 (rel. June 14, 2005) ("NPRM"). Capstar filed its Petition on August 4, 2005 and thus it is not subject to the freeze. However, this proceeding is eligible for settlement under the 90-day settlement window announced on June 20, 2005, because (1) the *Notice of Proposed Rule Making* in this proceeding has been released and (2) the comment deadline in this proceeding was prior to June 14, 2005. *See Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments*, Public Notice, at 1 (rel. June 20, 2005).

accommodate a minor change application filed by Capitol for WFXQ (the “Capitol Counterproposal”).³ The Capstar Proposal and the Capitol Counterproposal are mutually exclusive.⁴ In its comments, however, Capitol submitted that a grant of the Capitol Counterproposal would eliminate the mutual exclusivity consistent with the Commission’s policy to attempt, where possible, to eliminate conflicts between coordinates specified by parties.⁵

In its Reply Comments, Capstar argues that Capitol’s Counterproposal should not be comparatively preferred over the Capstar Proposal, because the latter “would provide Liberty with its first local aural transmission service, which advances allotment Priority 3.”⁶ However, Capstar fails to point out that Capitol’s Counterproposal still allows Capstar to provide Liberty with its first local aural transmission service. Indeed, Capitol’s Counterproposal would move Capstar’s facilities *closer* to Liberty, thus providing a stronger signal to that community.⁷ If anything, it is Capitol’s Counterproposal which better advances allotment Priority 3, since it allows both Capstar to provide first local aural transmission service to Liberty and Capitol to improve its first local aural transmission service to Creedmoor.⁸

³ See FCC File No. BMPH-20050509ACV (accepted for filing May 11, 2005).

⁴ See *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd 4917 (rel. Aug. 4, 1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993).

⁵ Capitol Comments at 2 (filed May 9, 2005).

⁶ Capstar Reply at 3 (filed May 24, 2005) (citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)).

⁷ Under the Capitol Counterproposal, the Capstar transmitter site would be approximately 12.5 kilometers closer to Liberty. See Technical Exhibit attached hereto as Exhibit 1.

⁸ Capitol has been issued a Construction Permit to change its community of license from Chase City, Virginia to Creedmoor, North Carolina. See FCC File No. BPH-20040809AAJ (granted Nov. 23, 2004). The Capitol Counterproposal includes a proposed minor modification of the Construction Permit.

Furthermore, Capitol's Counterproposal better advances the public interest concerns of Priority 4, because there would be a greater overall population gain. As set forth in the Technical Exhibit attached hereto as Exhibit 1, under Capitol's Counterproposal, the combined net 60 dBu population gain of WFXQ and WVBZ would be 950,226 persons. In contrast, the combined net population gain of the two stations under the Capstar Proposal would be only 793,664, a difference of over 156,000 persons. It is clearly in the public interest for the Commission to provide the public with more listening options by allowing broadcast stations to maximize their audience reach to the extent possible. Capitol's Counterproposal advances that goal.

Finally, Capitol submits that the only case relied upon by Capstar, *Oswego and Granby, New York*,⁹ is in conflict with prior decisions. In *Oswego*, the Chief of the Allocations Branch ("Chief") failed to follow the prior decisions of the Mass Media Bureau ("Bureau") cited by Capitol in its Comments. In decision after decision, the Bureau upheld a policy of attempting, where possible, to eliminate conflicts between coordinates specified by parties.¹⁰ Moreover, the *Oswego* case is in conflict with the Chief's prior determination that the Bureau's policy of resolving such conflicts is not unduly burdensome to a petitioner, where the petitioner, as in this

⁹ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Oswego and Granby, New York)*, Report and Order, MM Docket No. 00-169 (Chief, Allocations Branch, MMB rel. Sept. 21, 2001) ("*Oswego*"); see Capstar Reply Comments at 3-4.

¹⁰ Capitol Comments at 2 (citing *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia)*, Memorandum Opinion and Order, MM Docket No. 90-67, 11 FCC Rcd. 5758 ¶ 16 (MMB rel. May 13, 1996); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Saltville, Virginia and Jefferson, North Carolina)*, Report and Order, MM Docket No. 91-137, 10 FCC Rcd. 7578, ¶ 1 n.1 (MMB rel. July 10, 1995); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Newberry Springs, California)*, Report and Order, MM Docket No. 92-202, 10 FCC Rcd. 5047, ¶ 3 (MMB rel. May 9, 1995)).

case, has already proposed a change of transmitter site in its petition.¹¹ The *Oswego* case inexplicably failed to follow the precedent set in those cases and thus is an aberration. Capitol urges the Bureau to reaffirm the policy delineated in the cases cited herein.

For the foregoing reasons, Capitol urges the Bureau to: 1) grant the Capitol Counterproposal; 2) grant the WFXQ minor modification application; and 3) grant Capstar's Petition as modified by the Capitol Counterproposal.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INC.

By: 

Marvin Rosenberg
David A. O'Connor
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, D.C. 20006
Its Attorneys

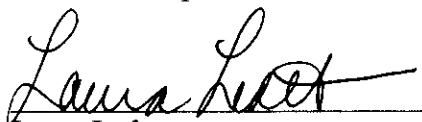
June 27, 2005

¹¹ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Huntingdon, Tennessee), Report and Order, MM Docket No. 91-248, 8 FCC Rcd 3918 n.2 (Chief, Allocations Branch, MMB rel. June 4, 1993).*

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on June 27, 2005, a copy of the foregoing "Surreply of Capitol Broadcasting Company, Inc." was served, via first class mail, to the following:

Marissa G. Repp, Esq.
Tarah S. Grant, Esq.
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Counsel for Capstar TX Limited Partnership


Laura Ledet

3004098_v1

EXHIBIT 1

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
SURREPLY OF
CAPITOL BROADCASTING COMPANY, INC.
IN MM DOCKET NO. 05-115
HIGH POINT AND LIBERTY, NORTH CAROLINA

Technical Narrative

This technical exhibit has been prepared on behalf of Capitol Broadcasting Company, Inc. ("Capitol"), licensee of WFXQ, Chase City, Virginia (Facility ID 51760) in support of its Surreply in response to the Reply of Capstar TX Limited Partnership ("Capstar") filed on May 24, 2005. Capstar has requested the reallocation, downgrade and modification of its license for WVBZ from channel 262C at High Point, North Carolina to channel 262C0 at Liberty, North Carolina ("Capstar Proposal").

In comments filed in this proceeding by Capitol, it was requested that the FCC grant Capstar's proposal subject to a modification of the allotment reference point at Liberty in order to accommodate a minor change application filed by Capitol for WFXQ ("Capitol Counterproposal"). The Capstar Proposal and Capitol Counterproposal are mutually exclusive. However, the modification of the Liberty allotment reference point requested by Capitol would eliminate the mutual exclusivity.

The purpose of this technical exhibit is to provide information concerning the net 60 dBu population gain for each proposal as well as the proximity of the allotment reference points for each proposal to Liberty.

60 dBu Gain Areas

Figure 1 is a map showing the FM 60 dBu contours for the licensed (BLH-19880805LB) WVBZ operation on channel 262C at High Point, the Capstar Proposal at Liberty and the Capital Proposal at Liberty. Figure 2 is a map depicting the 60 dBu contours for the authorized (BPH-20040809AAJ) and proposed (BMPH-20050509ACV) WFXQ operations on channel 260C3 at

Creedmoor. With the exception of the licensed operation of WVBZ, maximum facilities and uniform terrain were used to determine contour locations. For the licensed WVBZ operation, actual facilities and uniform terrain were presumed.

The following tabulates the 2000 Census population within each 60 dBu contour for the Capstar Proposal and Capital Proposal as well as the resulting 60 dBu gain, loss and net gain in population.¹

Capstar Proposal	
Contour/Area	2000 Census Population
WVBZ License 60 dBu	
Ch. 262C, High Point, NC	1,622,574
Proposed Ch. 262C0 Liberty 60 dBu	2,416,238
60 dBu Gain	999,990
60 dBu Loss	206,326
Net Gain	793,664

Capitol Proposal	
Contour/Area	2000 Census Population
WVBZ License 60 dBu	
Ch. 262C, High Point, NC	1,622,574
Proposed Ch. 262C0 Liberty 60 dBu	2,211,879
60 dBu Gain	641,801
60 dBu Loss	52,496
Net Gain	589,305
WFXQ CP 60 dBu	574,362
WFXQ Application 60 dBu	935,273
60 dBu Gain	431,381
60 dBu Loss	60,460
Net Gain	360,921
Overall Net Gain	950,226

As indicated above, adoption of the Capstar Proposal will result in a net gain in 60 dBu service to 793,664 persons whereas adoption of the Capitol Proposal will result in a net gain in 60 dBu service to 950,226 persons. In other words, adoption of the Capitol proposal will result in 60 dBu service to 156,562 more persons than the would adoption of the Capstar proposal.

Allotment Reference Point Proximity to Liberty

Figure 3 is a map which depicts the Liberty channel 262C0 allotment reference points as set forth in the Capstar Proposal and Capitol Proposal. Also shown are the 2000 Census city limits for Liberty as well as the Liberty reference point.² The Liberty channel 262C0 allotment reference point set forth in the Capstar Proposal is located 17.6 kilometers from the Liberty reference point. The Liberty channel 262C0 allotment reference point set forth in the Capitol Proposal is located 5.1 kilometers from the Liberty reference point. Thus, adoption of the Capitol Proposal will result in the Liberty channel 262C0 allotment reference point being located 12.5 kilometers closer to the Liberty reference point.

This technical exhibit has been prepared by or under the direct supervision of W. Jeffrey Reynolds, technical consultant with the firm of du Treil, Lundin and Rackley, Inc., a telecommunications consulting firm located in Sarasota, Florida, who states that his qualifications are a matter of record with the Federal Communications Commission, having been

¹ The population within each FM 60 dBu contour and 60 dBu gain, loss and net gain areas were calculated using a computer program that utilizes the 2000 U.S. Census database of "population centroids".

² The Liberty reference point was obtained from the Geographic Names Information System.

presented on previous occasions. All data and statements contained herein are true and correct to the best of his knowledge and belief.

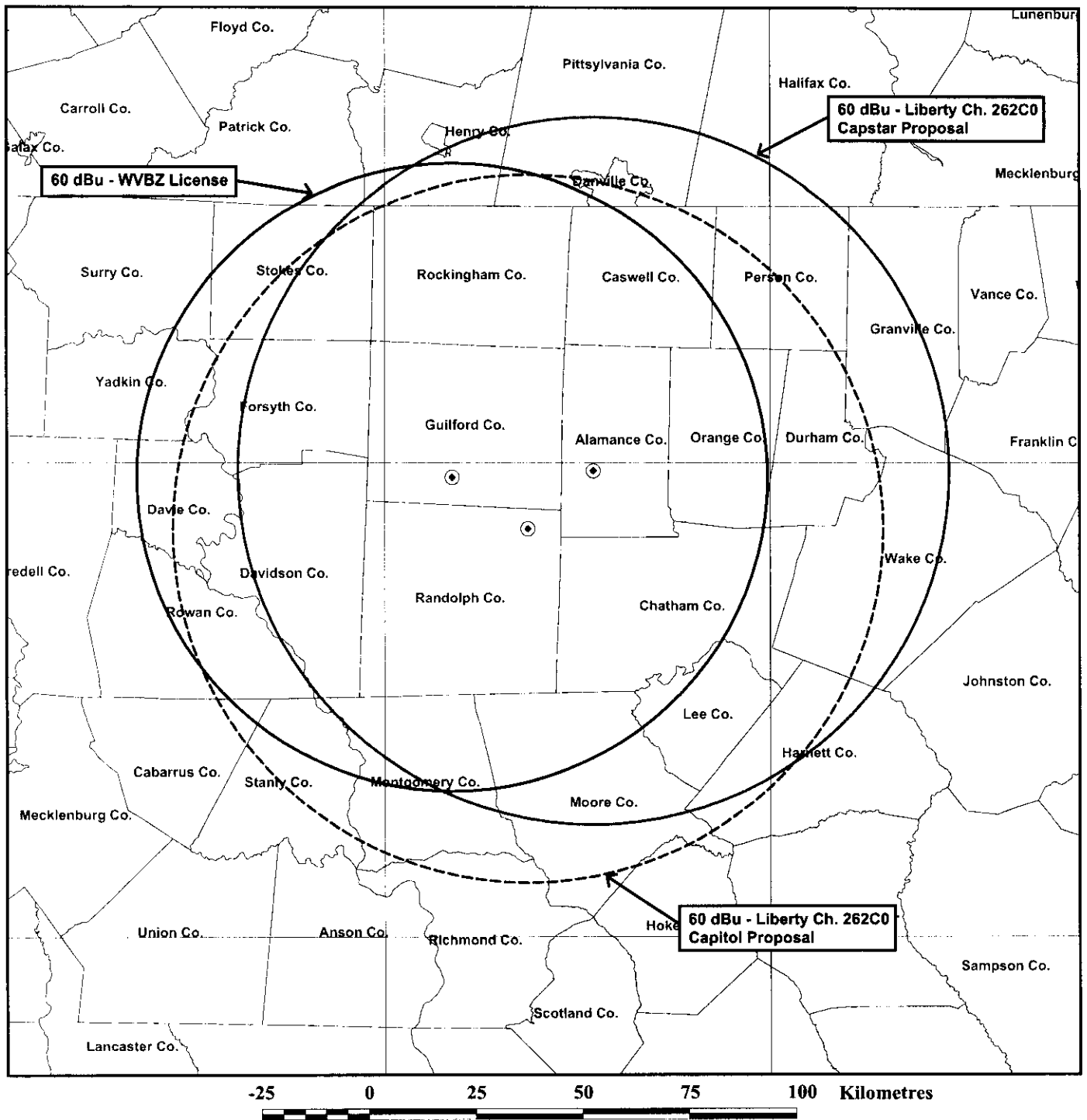


W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, FL 34237-6019
(941) 329-6000
JEFF@DLR.COM

June 23, 2005

Figure 1

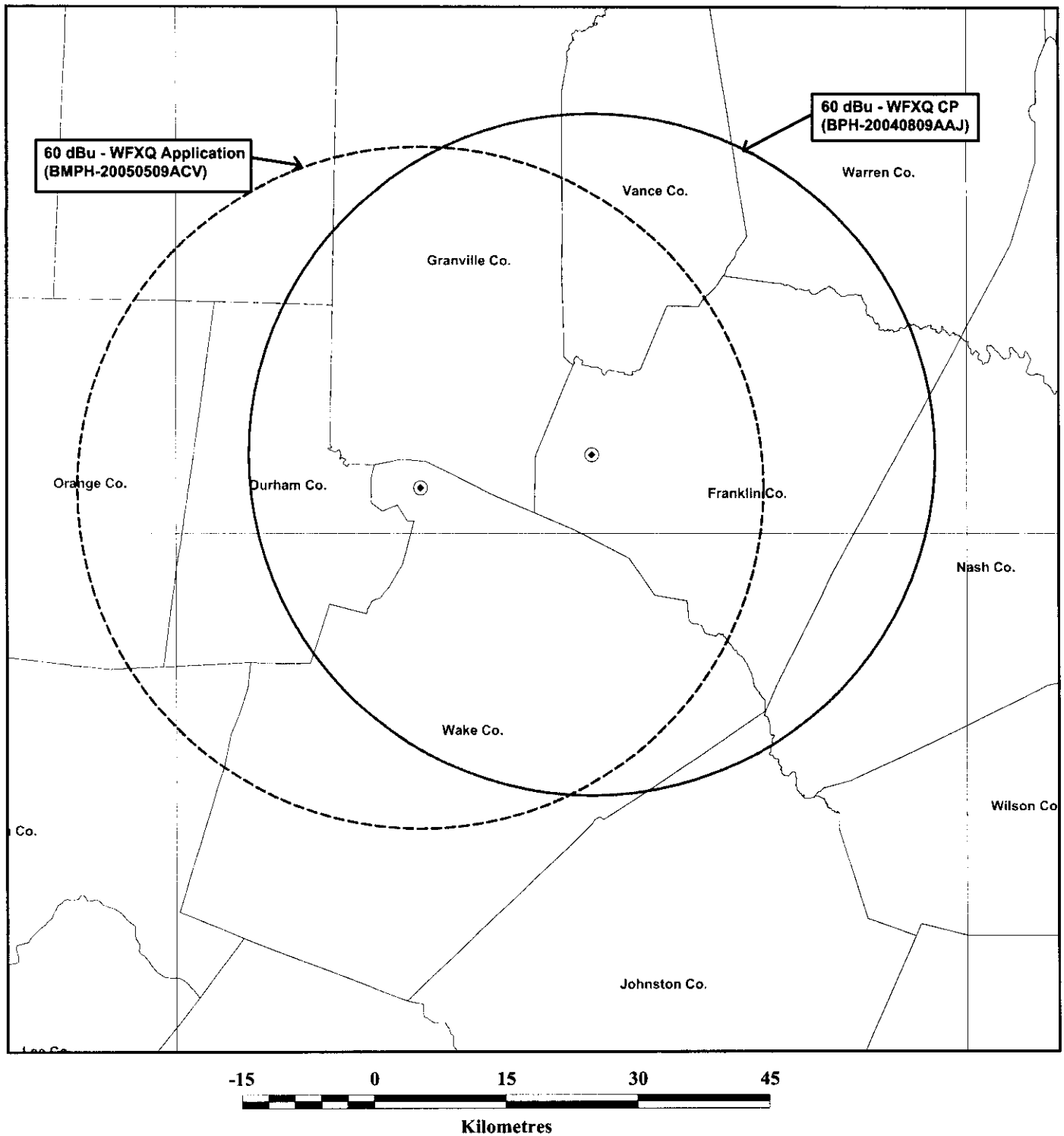


WVBZ 60 DBU GAIN/LOSS AREAS

SURREPLY OF
CAPITOL BROADCASTING COMPANY, INC.

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2

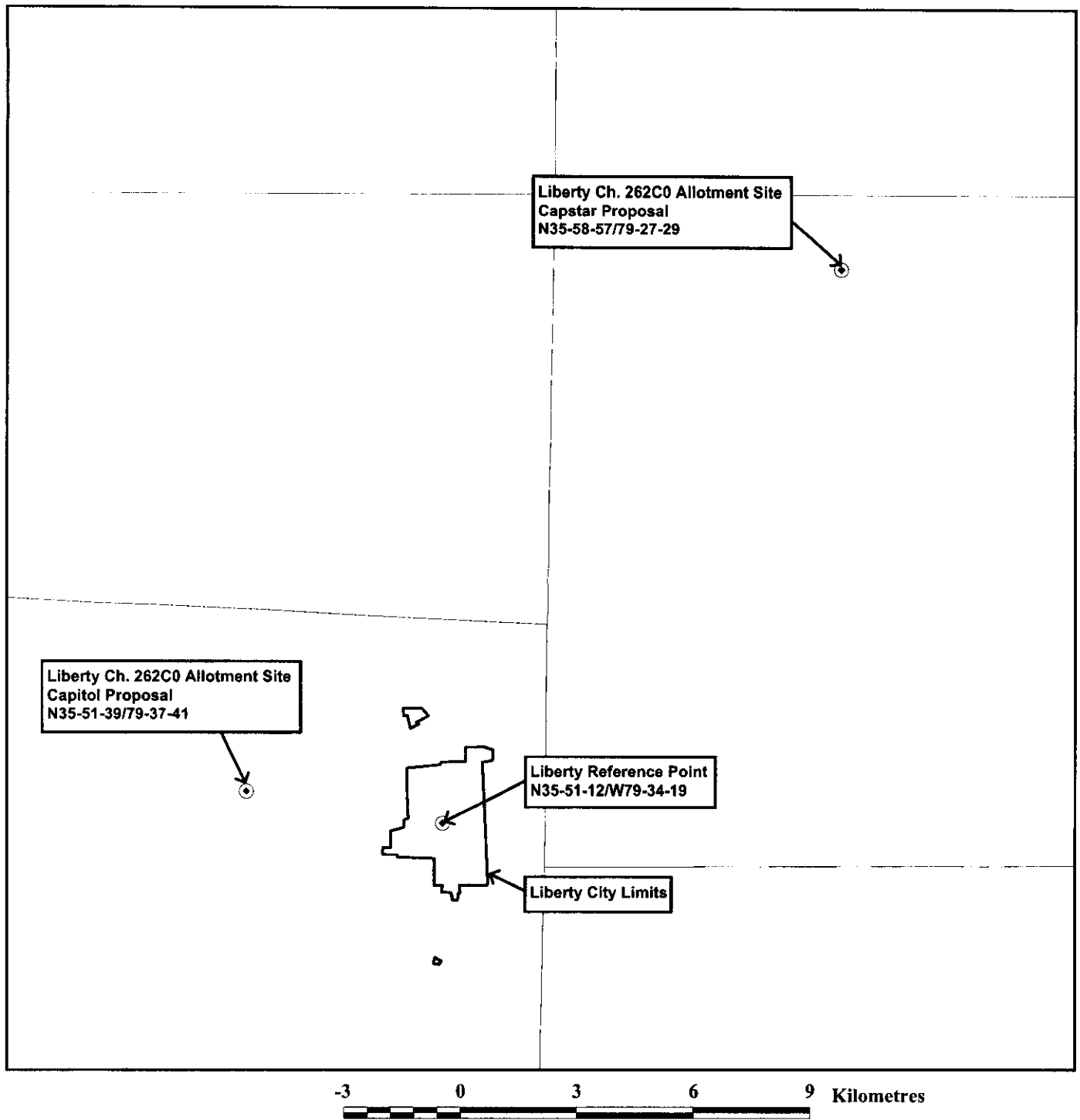


WFXQ 60 DBU GAIN/LOSS AREAS

SURREPLY OF
CAPITOL BROADCASTING COMPANY, INC.

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3



**PROXIMITY TO LIBERTY
CH 262C0 ALLOTMENT REFERENCE POINTS**

**SURREPLY OF
CAPITOL BROADCASTING COMPANY, INC.**

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	MB Docket No. 05-115
Amendment of Section 73.202(b),)	RM-11202
Table of Allotments,)	
FM Broadcast Stations.)	
(High Point and Liberty, North Carolina))	

To: Office of the Secretary
For: Allocations Branch, Audio Division, Media Bureau

**MOTION FOR LEAVE TO FILE
SURREPLY**

Capitol Broadcasting, Inc., the licensee of WFXQ(FM), Chase City, Virginia, by its counsel, hereby requests leave to file the concurrently filed Surreply of Capitol Broadcasting Company, Inc. ("Surreply") in the above-captioned proceeding. Capitol filed comments in this proceeding on May 9, 2005. Capstar TX Limited Partnership ("Capstar"), the proponent of the Petition for Rule Making, filed comments on the same date.

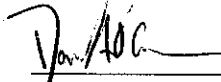
The Surreply is filed in response to the May 24, 2005 Reply Comments of Capstar in this proceeding. Capitol submits that good cause exists to accept the Surreply because Capitol has not been afforded any opportunity to respond to the substance of Capstar's Reply Comments. A grant of this request would be fully consistent with precedent in other proceedings in which the Commission has considered the merits of a Surreply.¹

¹ See, e.g., *Shawnee Broadcasting, Inc. v. Cebridge Connections*, Memorandum Opinion and Order, DA 04-3344, 19 FCC Rcd 20941 (Dep. Chief, Policy Div., MB rel. Oct. 25, 2004); *Cable Television Association of Georgia v. Georgia Power Co.*, Order, DA 03-2613, 18 FCC Rcd 16333 (Chief, EB rel. Aug. 8, 2003).

Accordingly, in order for the Commission to have a complete record before it with respect to this proceeding, Capitol respectfully requests that the Commission grant this Motion and consider the merits of the Surreply.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INC.



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Its Attorneys

June 27, 2005

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on June 27, 2005, a copy of the foregoing "Motion for Leave to File Surreply" was served, via first class mail, to the following:

Marissa G. Repp, Esq.
Tarah S. Grant, Esq.
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Counsel for Capstar TX Limited Partnership


Laura Ledet